TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

NOS. 526, 527.

No. 526.—JUNIUS S. MORGAN AND WALTER H. BURNS, COPARTNERS AS J. S. MORGAN & COMPANY, APPELLANTS, vs. THE UNITED STATES.

No. 527.—THE UNITED STATES, APPELLANTS, vs. THE MANHATTAN SAVINGS INSTITUTION.

APPEALS FROM THE COURT OF CLAIMS.

FILED JULY 7, 1883.

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1 I.—*Claim transmitted by the Secretary of the Treasury under section 1063 of the Revised Statutes.*

In the Court of Claims.

J. S. MORGAN AND COMPANY, WITH THE Manhattan Savings Institution, of New York, as adverse claimant,
versus
THE UNITED STATES. } No. 12273.

It appears of record that this claim, with sundry others, was transmitted March 12, 1880, by the honorable Secretary of the Treasury to the Court of Claims for adjudication, pursuant to section 1063 of the Revised Statutes, and that said claim was filed March 13, 1880.

JOHN RANDOLPH,
Ass't Clerk Ct. of Claims.

2 II.—*Petition of Junius S. Morgan and Walter H. Burns, copartners, doing business under the firm-name of J. S. Morgan and Company, vs. The United States, No. 12273.—Filed May 5, 1881.*

To the honorable the Judges of the Court of Claims:

Your petitioners, Junius S. Morgan and Walter H. Burns, copartners, doing business under the firm-name of J. S. Morgan & Co., respectfully represent:

I. The petitioners are and were at the times hereafter mentioned copartners, doing business as bankers in the city of London, England, and as such engaged in the negotiation, purchase, and sale of stocks, bonds, and other securities.

II. Under and in pursuance of the authority conferred upon the Secretary of the Treasury of the United States by the act of Congress approved March 3, 1865, entitled "An act to provide ways and means for the support of the Government," he issued, disposed of, and delivered to bona fide purchasers for value a large number of negotiable bonds of the United States of different denominations, known as "five-twenty bonds," consols of 1865, with interest coupons thereto attached.

3 III. Among the said bonds so issued, disposed of, and delivered by the Secretary of the Treasury were ten certain bonds of the United States, each of the denomination of $1,000, and bearing date July 1, 1865, whereby by the terms and conditions contained in each of the said bonds the United States of America acknowledged themselves to be indebted unto the bearer in the sum of $1,000, redeemable at the pleasure of the United States after the 1st day of July, 1870, and payable on the 1st day of July, 1885, with interest from the 1st day of July, 1865, inclusive, at six per cent. per annum, payable on the first days of January and July in each year on the presentation of the proper interest coupon thereunto annexed, except the six months' interest due July 1, 1885, which by the terms and conditions in each of the said bonds was provided to be payable with the said bond.

Among the said bonds so issued, disposed of, and delivered by the Sec-

retary of the Treasury, as above stated, were also ten other bonds of the United States, each of the denomination of $500, and bearing date July 1, 1865, whereby by the terms and conditions contained in each of said last-mentioned bonds the United States of America acknowleged themselves to be indebted unto the bearer in the sum of $500, redeemable at the pleasure of the United States, after the 1st day of July, 1870, and payable on the 1st day of July, 1885, with interest from the 1st day of July, 1865, inclusive, at six per cent. per annum, payable on the first days of January and July in each year on the presentation of the proper interest coupon thereunto annexed; except the six months' interest due July 1, 1885, which by the terms and conditions in each of the said last-mentioned bonds was provided to be payable with the said bond.

IV. Afterwards, and on or about the 27th day of April, 1867,
4 the Treasury Department issued and delivered to bankers and dealers in Government bonds, including your petitioners, a circular, of which the following is a copy:

"Loan.

"TREASURY DEPARTMENT.
"*April* 27, 1867.

"In consequence of the increasing trouble, wholly without practical benefit, arising from notices which are constantly received at the Department, respecting the loss of coupon bonds which are payable to bearer, and of Treasury notes issued and remaining in blank at the time of loss, it becomes necessary to give this public notice that the Government cannot protect, and will not undertake to protect, the owners of such bonds and notes against the consequences of their own fault or misfortune.

"Hereafter all bonds, notes, and coupons payable to bearer, and Treasury notes issued and remaining in blank, will be paid to the party presenting them, in pursuance of the regulations of the Department, in the course of regular business, and no attention will be paid to caveats which may be filed for the purpose of preventing such payment.

"H. MCCULLOCH,
"*Secretary of the Treasury.*"

V. The said ten five-twenty bonds, consols of 1865, of the denomination of one thousand dollars each, and the said ten "five-twenty bonds," consols of 1865, of the denomination of five hundred dollars each, were, at various dates in the months of June and July, 1879, purchased and received by the petitioners in the due and regular course of business at their banking-house in the city of London, and at the time of the said purchase they paid therefor the full value of the said several bonds in the city of London, and your petitioners so purchased and paid for the said bonds, and each of them, in good faith and without any knowledge, notice, or suspicion that the persons from whom the same were purchased were not the owners thereof and lawfully entitled to the same, and in the full belief that they were such owners and so entitled.

5 VI. The said bonds were of the same form, differing only in the denomination and numbers thereof, and a copy of one of the said bonds of the denomination of one thousand dollars is hereto annexed,

marked Exhibit A, and a copy of one of the said bonds of the denomination of five hundred dollars is also hereto annexed, marked Exhibit B.

The numbers upon the said bonds of the denomination of one thousand dollars each were and are as follows, viz: 152,410, 152,411, 161,662, 165,120, 165,167, 169,044, 184,791, 194,439, 194,742, and 201,292.

The numbers upon the said bonds of the denomination of five hundred dollars each were and are as follows, viz: 85,646, 86,107, 89,707, 89,728, 90,319, 93,043, 93,170, 94,577, 97,983, and 98,876.

The number 85,646, upon one of said bonds, is alleged to have been altered from 85,046; the number 86,107, upon another of said bonds, is alleged to have been altered from 85,107; the number 97,983, upon another of said bonds, is alleged to have been altered from 97,933, and the number 98,876, upon another of said bonds, is alleged to have been altered from 99,876.

Your petitioners had no knowledge, notice, or suspicion when they purchased and received the said bonds, as aforesaid, that there had been any alteration or attempted alteration of the numbers upon the said bonds, or either of them, or that the numbers then borne by the said bonds were not the numbers of the same as issued from the Treasury Department, and your petitioners purchased and received the said bonds as aforesaid in the full belief that the said numbers on the said bonds were the numbers of the same as issued from the Treasury Department.

VII. The Secretary of the Treasury, at different dates, gave notice that the principal and accrued interest of certain of the coupon bonds of the United States, dated July 1, 1865, and known as "five-twenty
6 bonds," of the act of March 3, 1865, consols of 1865, would be paid at the Treasury Department as follows, to wit:

On or about July 30, 1878, notice that numbers 151,001 to 157,000, both inclusive, of said bonds of the denomination of one thousand dollars, would be paid on and after October 30, 1878.

On or about August 5, 1878, notice that numbers 84,001 to 86,000, both inclusive, of said bonds of the denomination of five hundred dollars, and numbers 157,001 to 163,500 of said bonds of the denomination of one thousand dollars, both inclusive, would be paid on and after November 5, 1878.

On or about August 7, 1878, notice that numbers 86,001 to 87,000, both inclusive, of said bonds of the denomination of five hundred dollars, and numbers 163,501 to 169,000, both inclusive, of said bonds of the denomination of one thousand dollars, would be paid on and after November 7, 1878.

On or about August 10, 1878, notice that numbers 87,001 to 90,000, both inclusive, of said bonds of the denomination of five hundred dollars, and numbers 169,001 to 174,000, both inclusive, of said bonds of the denomination of one thousand dollars, would be paid on and after November 10, 1878.

On or about August 16, 1878, notice that numbers 90,001 to 92,000, both inclusive, of said bonds of the denomination of one thousand dollars, would be paid on and after November 16, 1878.

On or about August 26, 1878, notice that numbers 92,001 to 95,000, both inclusive, of said bonds of the denomination of five hundred dollars, would be paid on and after November 26, 1878.

On or about September 4, 1878, notice that numbers 184,001 to 189,000, both inclusive, of said bonds of the denomination of one thousand dollars, would be paid on and after December 4, 1878.

7 On or about September 16, 1878, notice that numbers 97,001 to 99,000, both inclusive, of said bonds of the denomination of five hundred dollars, would be paid on and after December 16, 1878.

On or about November 16, 1878, notice that numbers 193,001 to 197,000, both inclusive, of said bonds of the denomination of five hundred dollars, would be paid on and after February 16, 1879.

On or about December 9, 1878, notice that numbers 200,001 to 204,000, both inclusive, of said bonds of the denomination of one thousand dollars, would be paid on and after March 9, 1879.

VIII. Having so purchased and received the said bonds, and being in possession thereof as aforesaid, the petitioners delivered the same to one Charles F. Conant, an agent of the Treasury Department at London, England, who accepted and received the same on behalf of the Secretary of the Treasury at different dates between June 1, 1879, and August 30, 1879, for redemption and payment by the United States; and the said bonds were so delivered and intrusted to the United States for the purpose of procuring the redemption and payment thereof, and for no other purpose, in pursuance of the notices given by the Secretary of the Treasury, on behalf of the United States, that the said bonds would be redeemed and paid if they should be so sent; and the petitioners are advised, and insist, that having received the said bonds for such purpose, and under such circumstances, it was the duty of the United States to have redeemed and paid the same to the petitioners, or to have returned the same to them unpaid and unredeemed.

The said bonds have been neither redeemed and paid by the United States nor returned by them to the petitioners, but the said several bonds are still held by the United States, and remain unredeemed and unpaid.

8 IX. After the delivery of the said bonds to the said Conant, as aforesaid, the petitioners were informed by the Secretary of the Treasury that it being claimed that the said bonds had been stolen from the Manhattan Savings Institution of New York, the same would be held until the right of ownership should be established, and afterwards that, in accordance with section 1063, Revised Statutes of the United States, he had referred to this honorable court the claim of the petitioners to the present payment by his Department of the said bonds of the United States, which were claimed, as stated by the said Secretary, to be the lawful property of the Manhattan Savings Institution of New York, and were alleged to have been stolen from the banking-house of said institution on or about the 27th day of October, 1878.

X. The petitioners deny that the said Manhattan Savings Institution of New York is the legal owner of the said bonds or of either of them, or has any title to or interest in the said bonds or either of them, or any right to receive or demand the amount thereof; and the petitioners claim and insist that they are the lawful owners of the said bonds and each of them, and are justly entitled to recover and receive the same from the United States, or the amount thereof, with the interest accrued and due th reon.

XI. By reason of the premises there became and is due from the United States to the petitioners the sum of fifteen thousand dollars in respect of said bonds, with interest at the rate of six per cent. per annum on $1,000, the principal sum of bond No. 152,410, from July 1, 1878, to October 30, 1878; on $1,000, the principal sum of bond No. 152,411, from July 1, 1878, to October 30, 1878; on $500, the principal sum of bond No. 85,646, from July 1, 1878, to November 5, 1878; on $500, the principal sum of bond No. 86,107, from July 1, 1878, to November 7, 1878; on $1,000, the principal sum of bond No. 161,662, from July 1, 1878, to November 5, 1878; on $1,000, the principal sum of bond No. 165,120, from July 1, 1878, to November 7, 1878; on $1,000, the principal sum of bond No. 165,167, from July 1, 1878, to November 7, 1878; on $500, the principal sum of bond No. 89,707, from July 1, 1878, to November 10, 1878; on $500, the principal sum of bond No. 89,728, from July 1, 1878, to November 10, 1878; on $1,000, the principal sum of bond No. 169,044, from July 1, 1878, to November 10, 1878; on $500, the principal sum of bond No. 90,319, from July 1, 1878, to November 16, 1878; on $500, the principal sum of bond No. 93,043, from July 1, 1878, to November 26, 1878; on $500, the principal sum of bond No. 93,170, from July 1, 1878, to November 26, 1878; on $500, the principal sum of bond No. 94,577, from July 1, 1878, to November 26, 1878; on $1,000, the principal sum of bond No. 184,791, from July 1, 1878, to December 4, 1878; on $500, the principal sum of bond No. 97,983, from July 1, 1878, to December 16, 1878; on $500, the principal sum of bond No. 98,876, from July 1, 1878, to December 16, 1878; on $1,000, the principal sum of bond No. 194,439, from January 1, 1879, to February 16, 1879; on $1,000, the principal sum of bond No. 194,742, from January 1, 1879, to February 16, 1879; on $1,000, the principal sum of bond No. 201,292, from January 1, 1879, to March 19, 1879; which said principal and interest amount to fifteen thousand two hundred and ninety-three dollars, and the said amount the petitioners are justly entitled to receive from the United States, after allowing all just credits and offsets.

XII. The petitioners are the owners of the said claim. No assignment or transfer of said claim or any part thereof has been made. The petitioners are now, and were at all times hereinbefore stated, citizens of the United States, and have, and each of them has, at all said times borne true allegiance to the Government of the United States, and they have not, nor has either of them, in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The petitioners believe the facts stated in this petition to be true.

Wherefore the petitioners pray that this honorable court will adjudge and decree that they are entitled to the said bonds of the United States, and each of them, and are entitled to be paid the amount due on the same by the United States, and that judgment may be accordingly rendered in favor of the petitioners against the United States for the said sum of fifteen thousand two hundred and ninety-three dollars.

J. S. MORGAN.

The petitioners' address is 22 Old Broad street, London, England.

The address of their attorney, J. Hubley Ashton, is 635 F street, Washington, D. C.

LONDON, ENGLAND, ss:

Be it remembered that on this 12th day of April, A. D. 1881, before the subscriber, a commissioner to administer oaths in the supreme court of judicature, personally appeared Junius Spencer Morgan, one of the petitioners named in the foregoing petition, who, being first duly sworn, deposes and says that he has carefully read the foregoing petition subscribed by him, and knows the contents thereof, and that the facts therein stated are true.

Witness my hand and seal this 12th day of April, A. D. 1881.

G. H. EDWARDS.

I, Joshua Nunn, vice and deputy consul-general of the United States of America at London, England, do hereby certify that the above is the true and genuine signature of George Halliley Edwards, a commissioner for taking affidavits at this city, and, as such, is entitled to full faith and credit.

[SEAL.] J. NUNN,

Vice and Deputy Consul-General, U. S. A., at London, England.

LONDON, *12th April*, 1881.

11 EXHIBIT A.

165,120.] [165,120.

[Consolidated debt. Issued under act of Congress approved March 3, 1865. Redeemable after five and payable twenty years from date.]

1,000.] [1,000.

It is hereby certified that the United States of America are indebted unto the bearer in the sum of one thousand dollars, redeemable at the pleasure of the United States after the 1st day of July, 1870, and payable on the 1st day of July, 1885, with interest from the 1st day of July, 1865, inclusive, at six per cent. per annum, payable on the first day of January and July in each year on the presentation of the proper coupon hereunto annexed. This debt is authorized by act of Congress approved March 3, 1865.

Washington, July 1, 1865.

J. LOWERY,
For Register of the Treasury.

Six months' interest due July 1, 1885, payable with this bond.

(Thirteen coupons attached from and including coupon for interest due January 1, 1879, to and including coupon for interest due January 1, 1885.)

12 EXHIBIT B.

89,707.] [89,707.

[Consolidated debt. Issued under act of Congress approved March 3, 1865. Redeemable after five and payable twenty years from date.]

500.] [500.

It is hereby certified that the United States of America are indebted unto the bearer in the sum of five hundred dollars, redeemable at the

pleasure of the United States after the 1st day of July, 1870, and payable on the 1st day of July, 1885, with interest from the 1st day of July, 1865, inclusive, at six per cent. per annum, payable on the first day of January and July in each year on the presentation of the proper coupon hereunto annexed.

This debt is authorized by act of Congress approved March 3, 1865.

Washington, July 1, 1865.

J. LOWERY,
For Register of the Treasury.

Six months' interest due July 1, 1885, payable with this bond.

(Thirteen coupons attached from and including coupon for interest due January 1, 1879, to and including coupon for interest due January 1, 1885.)

13 III.—*Traverse of the petition of J. S. Morgan and Co.—Filed May 26, 1881.*

And now comes the Attorney-General, on behalf of the United States, and, answering the petition of the claimants herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimants have at all times borne true faith and allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

THOMAS SIMONS,
Ass't Attorney-General.

14 IV.—*Petition of the Manhattan Savings Institution, adverse claimant, vs. The United States, No. 12273.—Filed May 5, 1881.*

The petition of the Manhattan Savings Institution respectfully states:

1. That they are a corporation, duly incorporated as such under the laws of the State of New York, and doing business at the city of New York, with full power to purchase, hold, and own bonds of the description hereinafter set forth.

2. That pursuant to an act of Congress of the United States, approved March 3, 1865, the Secretary of the Treasury borrowed eleven millions of dollars and upwards, and issued therefor bonds of the United States, of the class called coupon bonds, dated July 1, 1865, known as "Five-twenty bonds," of the act of March 3, 1865, consols of 1865, bearing interest at the rate of six per centum per annum, among others coupon bonds Nos. 85,046, 85,107, 89,707, 89,728, 90,319, 93,043, 93,170, 94,577, 97,933, and 99,876, for the principal sum of five hundred dollars each, and Nos. 152,410, 152,411, 161,662, 165,120, 165,167, 169,044, 184,791, 194,439, 194,742, and 201,292, for the principal sum of one thousand dollars each, payable to bearer, with coupons for said interest annexed. That by said act it was provided that said bonds might be made payable at any period not more than forty years from the date of their issue, or might

14½ be made redeemable at the pleasure of the Government, at or after any period not less than five years nor more than forty years from

date, or might be made redeemable and payable as aforesaid, as might be expressed on their face. That said bonds expressed on their face the following clause, viz: "The United States of America are indebted unto the bearer in the sum of one thousand [or five hundred] dollars, redeemable at the pleasure of the United States after the first day of July, 1870, and payable on the first day of July, 1885, with interest from the first day of July, 1865, inclusive, at six per cent. per annum."

3. That subsequently, and by another act of Congress, approved July 14, 1870, it was provided that the Secretary of the Treasury be thereby authorized as therein set forth, to pay at par and cancel any of the aforesaid bonds; the particular bonds so to be paid and cancelled to be indicated and specified by class, date, and number in public notice to be given by the Secretary of the Treasury; and further, said act provided that in three months after the date of such public notice the interest on the bonds so selected and advertised, to be paid should cease.

4. That after the issue of said bonds and prior to the 27th of October, 1878, the Manhattan Savings Institution purchased, paid the full value for, and received into their absolute possession the bonds hereinbefore described, and from the time of their said purchase continued to hold and was entitled to the same, with all right, title, and interest therein and thereto, down to the 27th of October, 1878, on which day the vaults of said Manhattan Savings Institution were burglariously entered and said bonds stolen therefrom by persons, strangers, acting without the consent or knowledge of said institution or any of its trustees, or its president, secretary, treasurer, or either of its clerks; that said bonds were fraudulently taken away at that time and have never since been returned to said savings institution, nor has either of them; that said institution has never to this day agreed to sell, or in any way dispose of, or part with, either of said bonds, or any right, title, or interest therein or thereto, and has never sold or disposed of, or consented to part with either of said bonds.

5. That immediately after said burgarly said savings institution caused public notice to be given in all the leading commercial cities of this country and Europe of such theft of said bonds and of the Nos. and particulars thereof, a part of which, in large type, reads as follows, viz:

"IMPORTANT NOTICE!

"The Manhattan Savings Institution was, on the morning of Sunday, the 27th of October, 1878, robbed of * * * United States 5-20's of July, 1865, * * * of $1,000 each, * * * Nos. 152,410, 152,411, 161,662, 165,120, 165,167, 169,044, 184,791, 194,439, 194,742, and 201,292; and of $500 each, Nos. 85,046, 85,107, 89,707, 89,728, 90,319, 93,043, 93,170, 94,577, 97,933, and 99,876.

"All persons are notified not to purchase or negotiate the bonds or securities, or any of them, as the same are the property of the said Manhattan Savings Institution.

"If any of the above bonds are offered you will please notify the police of your city.

"New York, October 27, 1878.

"EDWARD SCHELL,
"*President.*
"CHAS. F. ALVORD,
"*Secretary.*"

That said notice was also sent to all the leading bankers of the world, and among others to the said claimants, J. S. Morgan & Co.

6. That thereafter, the number of some of said bonds were altered by strangers to said institution, and without its complicity, consent, or knowledge, as follows: No. 85,046 to 85,646; No. 85,107 to 86,107; No. 97,933 to 97,983; and No. 99,876 to 98,876, with the fraudulent intent of avoiding detection in attempting to sell the same, and to deceive, injure, and wrong any buyer thereof.

7. That pursuant to law, the Secretary of the Treasury gave public notice that the principal and accrued interest of said bonds would be paid at the Treasury of the United States as follows: On or about July 30th, 1878 (call No. 64), that Nos. 152,410 and 152,411 would be paid on the 30th of October, 1878; on or about August 5th, 1878 (call No.
16 65), that Nos. 85,046, 85,107, and 161,662 would be paid on the 5th of November, 1878; on or about August 7th, 1878 (call No. 66), that Nos. 165,120 and 165,167 would be paid on the 7th of November, 1878; on or about the 10th of August, 1878 (call No. 67), that Nos. 89,707, 89,728, and 169,044 would be paid on the 10th of November, 1878; on or about the 16th of August, 1878 (call No. 68), that No. 90,319 would be paid on the 16th of November, 1878; on or about the 26th of August, 1878 (call No. 69), that Nos. 93,043, 93,170, and 94,577 would be paid on the 26th of November, 1878; on or about the 4th of September, 1878 (call No. 70), that No. 184,791 would be paid on the 4th of December, 1878; on or about the 16th of September, 1878 (call No. 71), that No. 97,933 would be paid on the 16th of December, 1878; on or about the 16th of November, 1878 (call No. 72), that Nos. 99,876, 194,439, and 194,742 would be paid on the 16th of February, 1879; and on or about the 9th of December, 1878 (call No.74), that No. 201,292 would be paid on the 9th of March, 1879, and that the interest on said bonds would cease, upon the days upon which they were respectively made payable, as aforesaid.

8. That after the maturity of the said several "calls," all the said bonds were forwarded for redemption to the Loan Division, Secretary's Office, at the Treasury of the United States, in the city of Washington, by the said claimants, J. S. Morgan & Co., as follows: On or about the 21st of June, 1879, Nos. 165,120 and 165,167; on or about the 24th of June, 1879, Nos. 152,410, 152,411, 89,707, 89,728, 169,044; on or about the 26th day of July, 1879, No. 201,292; on or about the 2d of August, 1879, Nos. 161,662, 90,319, 93,043, 93,170, 94,577, 184,791, 194,439, and 194,742; and on or about the 30th of August, 1879, Nos. 85,046, 85,107, 97,933, and 99,876.

9. That shortly after the presentation of the said several bonds, respectively, by the said J. S. Morgan & Co., the Secretary of the Treasury notified the said institution thereof, and the said institution immediately claimed payment thereof, as the lawful owner thereof, as aforesaid, and the said institution reiterates and states here that it is now the sole owner of said bonds, and is entitled to receive the amount thereof.

10. That the said institution believes the aforesaid facts to be true.
17 In consideration of the premises, the said institution prays judgment of this honorable court that the said institution is entitled to the said bonds, and to each of them, and to the full amount thereof, viz, to fifteen thousand dollars and interest thereon at the rate of six per cent.

per annum, as per the coupons annexed, to the dates at which they were respectively made payable as aforesaid, and they demand the same as due them, after allowing all just off-sets and credits mentioned and set forth.

MANHATTAN SAVINGS INSTITUTION,
By EDWARD SCHELL, *P't.*

[Seal of Manhattan Savings Inst'n.]

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

Edward Schell, of the city of New York, hereby makes oath that he is the president of said Manhattan Savings Institution; that no assignment or transfer of the claim mentioned and referred to in the foregoing petition, or any part thereof, or interest therein has been made; that said savings institution is justly entitled to the amount therein claimed from the United States, after allowing all just credits and off-sets, and he believes the facts as stated in said petition to be true.

EDWARD SCHELL.

Subscribed and sworn before me March 2d, 1881.

[SEAL.] R. S. HAYWARD,
(56) *Notary Public, N. Y. Co.*

The post-office address of the Manhattan Savings Institution, claimants, is New York City.

The said claimants' attorney is H. C. Cady, No. 1427 F street, Washington, D. C.

18 V.—*Traverse of the petition of the Manhattan Savings Institution.—Filed June* 15, 1881.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

THOMAS SIMONS,
Ass't Attorney-General.

19 VI.—*Findings of fact and conclusion of law.—Filed June* 4, 1883.

J. S. MORGAN & CO. v. THE UNITED STATES.—THE MANHATTAN SAVINGS INSTITUTION v. THE UNITED STATES.

FINDINGS OF FACT.

These two cases having been heard before the Court of Claims, the court, upon the evidence, finds the facts in each case to be as follows:

I.

The claimants, composing the firm of J. S. Morgan & Co., are, and in the year 1879 and for a long time previous were, American merchants and

bankers, doing business in the city of London, England, and, during the refunding operations of the Government of the United States, under the act of July 14, 1870, as hereinafter mentioned, were members of the syndicates for the negotiation of the bonds of the funded loans authorized by that act. It was and is in the due and usual course of their business as bankers to negotiate, purchase, and sell stocks, bonds, and other securities.

II.

At the same time the Manhattan Savings Institution, a corporation created by law of the State of New York, existed and was doing business, and it still exists and does business, as a savings bank, in the city of New York.

III.

On the 27th of October, 1878, the said institution owned, and had in its possession in said banking-house, twenty coupon bonds of the United States, known as five-twenty bonds, consols of 1865, issued by the United States in pursuance of and in conformity with the provisions of the "Act to provide ways and means for the support of the Government," approved March 3, 1865. Ten of said bonds were for $500 each, and ten for $1,000 each. The following is a copy of one of the $1,000 bonds, without the number of it.

Consolidated debt, issued under act of Congress approved March 3d, 1865. Redeemable after five and payable twenty years from date.

1000. Register's office.] [Treasury Department. 1000.

[Engraving of United States Treasury.]

[SEAL.]

It is hereby certified that the United States of America are indebted unto the bearer in the sum of one thousand dollars, redeemable at the pleasure of the United States after the first day of July, 1870, and payable on the first day of July, 1885, with interest from the first day of July, 1865, inclusive, at six per cent. per annum, payable on the first day of January and July in each year on the presentation of the proper coupon hereunto annexed. This debt is authorized by act of Congress approved March 3d, 1865.

(Across the face:) 1000.

Washington, July 1st, 1865.

J. B. COLBY,
For Register of the Treasury.

Each of the $1,000 bonds was in the words and figures of this copy, and each of the $500 bonds was in the same words and figures, except that the words "five hundred" instead of one "thousand" appear in the statement of the sum in the body of the bond, and the figures indicating the

sum are 500 instead of 1,000. At each of the upper corners of each of said twenty bonds, and upon each of the coupons attached to each of said bonds was printed by types the serial number of the bond, as the same were printed thereon by authority of the Secretary of the Treasury when the bond was issued by the United States. The serial numbers of the bonds were as follows: $500 bonds, 85046, 85107, 89707, 89728, 90319, 93043, 93170, 94577, 97933, 99876; $1,000 bonds, 152410, 152411, 161662, 165120, 165167, 169044, 184791, 194439, 194742, 201292.

IV.

Early in the morning of Sunday, October 27, 1878, burglars entered the building in which was the banking-house of said institution, and overpowering the janitor of the institution, opened the iron vault, inside of which was an iron safe which they broke open, and from which they stole and carried away securities of various kinds, representing the value of about two and a half million dollars, among which were the twenty bonds aforesaid.

It does not appear that the officers or servants of said institution were guilty of any negligence or want of proper care in the safe-keeping of the bonds and securities which were so stolen.

V.

On the 30th of July, 1878, the Secretary of the Treasury made the following call for five-twenty bonds, consols of 1865, for redemption, and gave public notice thereof.

SIXTY-FOURTH CALL.

Redemption of 5-20 bonds of 1865.—Consols of 1865.

[1878. Department No. 82. Secretary's Office.]

TREASURY DEPARTMENT,
July 30, 1878.

By virtue of the authority given by the act of Congress approved July 14, 1870, entitled "An act to authorize the refunding of the national debt," I hereby give notice that the principal and accrued interest of the bonds herein-below designated, known as "five-twenty bonds" of the act of March 3, 1865, consols of 1865, will be paid at the Treasury of the United States, in the city of Washington, on and after the thirtieth day of October, 1878, and that the interest on said bonds will cease on that day:

Coupon bonds, dated July 1, 1865, *namely:*

$50—No. 69001 to No. 69500, both inclusive.
$100—No. 117001 to No. 120000, both inclusive.
$500—No. 82001 to No. 84000, both inclusive.
$1,000—No. 151001 to No. 157000, both inclusive.
Total coupon..... $2, 500, 000

21 Registered bonds, "redeemable at the pleasure of the United States after the 1st day of July, 1870," as follows:

$50—No. 2351 to No. 2400, both inclusive.
$100—No. 18351 to No. 18450, both inclusive.
$500—No. 10601 to No. 10700, both inclusive.
$1,000—No. 35451 to No. 35850, both inclusive.
$5,000—No. 9901 to No. 10250, both inclusive.
$10,000—No. 19051 to No. 19800, both inclusive.

Total registered $2,500,000

Aggregate..... $5,000,000

The amount outstanding, included in the numbers above, is five million dollars.

All United States bonds, forwarded for redemption, should be addressed to the "Loan Division, Secretary's office," and all registered bonds should be assigned to "the Secretary of the Treasury for redemption."

Where parties desire checks in payment for registered bonds, drawn to the order of any one but the payee, they should assign them to the Secretary of the Treasury for redemption account of the owner or owners, giving name or names thereof.

[SEAL.] JOHN SHERMAN, *Secretary.*

Afterwards the Secretary of the Treasury made and gave public notice of nine other like calls for five-twenty bonds, consols of 1865, for redemption which embraced others of the twenty bonds involved in this suit; and the following is a tabulated statement showing the number and date of each of the ten calls, which embraced any of the said twenty bonds, and the time when each call matured, together with the number and amount of each of the said twenty bonds called for redemption, and the amount of interest due on each bond at the maturity of the call embracing it:

No. of call.	Date of call.	Date of maturity of call.	Numbers of bonds.	Denomination of bonds.	Interest due at maturity of call.
64	July 30, 1878	October 30, 1878	152410	$1,000	$19 89
"	" "	" "	152411	1,000	19 89
65	August 5, 1878	November 5, 1878	161662	1,000	20 88
"	" "	" "	85046	500	10 44
"	" "	" "	85107	500	10 44
66	August 7, 1878	November 7, 1878	165120	1,000	21 20
"	" "	" "	165167	1,000	21 20
67	August 10, 1878	November 10, 1878	89707	500	10 85
"	" "	" "	89728	500	10 85
"	" "	" "	169044	1,000	21 70
68	August 16, 1878	November 16, 1878	90319	500	11 34
69	August 26, 1878	November 26, 1878	93043	500	12 16
"	" "	" "	93170	500	12 16
"	" "	" "	94377	500	12 17
70	September 4, 1878	December 4, 1878	184791	1,000	25 64
71	September 16, 1878	December 16, 1878	97933	500	13 81
72	November 16, 1878	February 16, 1879	194742	1,000	7 56
"	" "	" "	194439	1,000	7 56
"	" "	" "	99876	500	3 78
74	December 9, 1878	March 9, 1879	201202	1,000	11 01
				15,000	284 53

VI.

Great publicity was given through the newspapers to the fact of the robbery aforesaid, and some kind of a circular was issued by the Institution in regard to the robbery, but it does not appear what its terms were, or where or to whom it was sent.

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VII.

Between the time when said robbery took place and that at which the said twenty bonds reappeared, as hereinafter set forth, the serial numbers of four of them were wrongfully altered from what they were when stolen from the Manhattan Savings Institution, as above found. The alterations were as follows:

85046 altered to 85646.
85107 altered to 86107.
97933 altered to 97983.
99876 altered to 98876.

When, where, or by whom said alterations were made does not appear, there being not the least evidence tending to throw any light on those points.

There was nothing in the appearance of said four bonds, or the numbers thereof, when the bonds were purchased by and came into the possession of J. S. Morgan & Co., as hereinafter set forth, calculated to excite the suspicion or notice of a prudent and careful man; and the alterations of the numbers were so skillfully effected that they were only discoverable with the aid of a magnifying glass.

VIII.

During the period of the refunding transactions under the act of July 14, 1870, many five-twenty bonds of every call were not sent in promptly for redemption, but were held, in this country and Europe, through want of information, or otherwise, until long after the maturity of the call.

IX.

During the period of the refunding transactions of the Government under the act of July 14, 1870, large numbers of the European holders of the five-twenty bonds, of the act of March 3, 1865, called for redemption, from want of facility for sending their bonds to the United States, or to avoid the risk and expense of transmission, or various other reasons, were obliged to and did sell and dispose of their bonds, in the market, in London, to money-changers, bankers, and merchants, as the only means of obtaining the money for them. Many millions of the said called bonds were thus sold and disposed of in the London market, and dealt in by money dealers during that period, long after the maturity of the various calls.

X.

According to the custom and practice in London the said called bonds of the United States were commonly dealt in by buying and selling after the time fixed for their redemption, in the same way and just as freely as the bonds not called for redemption.

XI.

During the period from July, 1874, to January, 1879, the Secretary of the Treasury made various contracts, in writing, for the negotiation of five, four-and-a-half, and four per cent. bonds, issued under the refunding act of July 14, 1870, in Europe and this country, with associations of bankers and banking institutions in London and New York, which became known as syndicates.

The claimants, J. S. Morgan & Co., were members of a syndicate,
23 between which and the Secretary of the Treasury a contract was entered into on the 21st of January, 1879; which contract, and also the instructions issued in pursuance of it by the Secretary of the Treasury to Charles F. Conant, the funding agent in London, were as follows:

"This agreement, entered into this twenty-first day of January, one thousand eight hundred and seventy-nine, between the Secretary of the Treasury of the United States, of the first part, and Messrs. August Belmont & Co., of New York, on behalf of Messrs. N. M. Rothschild & Sons, of London, England, and associates and themselves; Messrs. Drexel, Morgan & Co., of New York, on behalf of Messrs. J. S. Morgan & Co., of London, and themselves; Messrs. J. & W. Seligman & Co., of New York, on behalf of Messrs. Seligman Brothers, of London, and themselves; and Messrs. Morton, Bliss & Co., of New York, on behalf of Messrs. Morton, Rose & Co., of London, and themselves, witnesseth:

"That the parties of the second part hereby severally subscribe as of this date for ten million dollars of the bonds known as the four per centum consols of the United States, issued under the acts of July 14, 1870, and January 20, 1871, and acts amendatory thereto, in the following proportions, to wit, one-fourth part by each of the said several parties; and it is agreed that if the parties of the second part shall not subscribe for $5,000,000 of said bonds each month, the party of the first part is authorized to forthwith terminate this contract; but the next subscription need not be made before April 1st, 1879, and all of said subscriptions shall be made on the terms and conditions following:

"First. The proceeds of said bonds shall be applied, in compliance with said acts, to the refunding of the public debt. The party of the first part will, on receiving a subscription under this contract for not less than five million dollars, issue a call for the redemption of United States six per centum five-twenty bonds equal to or exceeding said sum.

"Second. The parties of the second part agree to pay to the party of the first part at the Treasury Department in Washington, within the running of such call, the amount of four per centum bonds subscribed for under this contract at par and accrued interest to the date of subscription in United States gold coin, United States matured coin coupons, coin certificates of deposit issued under the act of March 3, 1863, or United States six per centum five-twenty bonds called for redemption not later than the date of the subscription to which the payment applies.

"Third. The parties of the second part shall receive a commission of one-fourth of one per cent. on all bonds taken by them under this contract, and for such sums in excess of ten million dollars subscribed for and taken by said parties they shall receive an additional commission of one-tenth of one per cent. on the amount in excess.

"Fourth. The Secretary of the Treasury shall transmit to London, England, at the risk and expense of the United States, the bonds subscribed for, and will receive in London, for transportation to the Treasury Department at Washington, any of the coupons or called bonds receivable under this contract, the amount thereof to be credited upon verification by the Treasurer of the United States; and he further agrees to maintain an agency in London, at the expense of the United States, for the convenience of making deliveries to said parties of the second part of said four per centum bonds; provided that no bonds shall be delivered to the parties of the second part until payment shall have been made in full therefor in accordance with the terms of this contract; and provided further that the said parties of the second part shall provide for said agency, without expense to the United States, a suitable office room or rooms, with vault accommodation for the safe-keeping of its securities.

"Fifth. It is agreed between the parties that this contract shall remain in force, unless previously terminated as above provided, until the thirtieth day of June, eighteen hundred and seventy-nine, and that during its continuance and full performance by the parties of the second part the Secretary of the Treasury shall not sell and deliver in Europe to other parties any of the said four per centum bonds, but this shall not be held to preclude the delivery by the Secretary of the Treasury in Europe of three million six hundred thousand dollars of said four per centum bonds already subscribed for by other parties, and said sum shall be considered as a part of the first subscription made under this contract, but no commission on said sum shall be allowed to the parties hereto.

"JOHN SHERMAN, *Secretary.*
"AUGUST BELMONT & Co.,
"*On behalf of Mess. N. M. Rothschild & Sons & associates & themselves.*
"DREXEL, MORGAN & CO.,
"*On behalf of Mess. J. S. Morgan & Co., of London, & themselves.*
"J. & W. SELIGMAN & CO.,
"*On behalf of Mess. Seligman Bros., of London, & themselves.*
"MORTON, BLISS & CO.,
"*On behalf of Mess. Morton, Rose & Co., of London, & themselves.*"

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"TREASURY DEPARTMENT,
"OFFICE OF THE SECRETARY,
"*Washington, D. C., January* 22, 1879.

"Hon. CHAS. F. CONANT:

"SIR: By virtue of the authority vested in me by the provisions of an act entitled 'An act to authorize the refunding of the national debt,' approved July 14, 1870, and the acts amendatory thereof, you are hereby appointed the funding agent of the Treasury Department and directed to assume the general management and supervision of all business in London, England, arising from the funding of bonds under the acts above cited.

"By the terms of the contract made on the 21st day of January, 1879, between the Secretary of the Treasury, of the first part, and Messrs. August Belmont & Co., of New York, on behalf of Messrs. N. M. Rothschild & Sons, of London, England, and associates and themselves; Messrs.

Drexel, Morgan & Co., of New York, on behalf of Messrs. J. S. Morgan & Co., of London, and themselves; Messrs. J. and W. Seligman & Co., of New York, on behalf of Messrs. Seligman Bros., of London, and themselves; Messrs. Morton, Bliss & Co., of New York, on behalf of Messrs. Morton, Rose & Co., of London, and themselves, of the second part, such of the bonds known as the four per centum consols of the United States, issued under the acts of July 14, 1870, and January 20, 1871, and acts amendatory thereto, as may be desired by the contracting parties, will be sent to London and delivered to your custody, and will be by you delivered to the contracting parties from time to time, and in such sums as they shall make payment to you therefor in United States matured coin coupons, coin certificates of deposit issued under the act of March 3, 1863, or United States six per centum five-twenty bonds called for redemption not later than the date of the subscription to which the payment applies.

"The same general plan under which former negotiations were conducted will be observed by you, except so far as modified by these instructions, which are based upon the contract before mentioned.

"All bonds, coupons, or certificates of deposit received by you must be kept in the vaults provided by the parties of the second part. The three combination locks with which the safes are provided shall at all times be used, and the combination of only one lock on each safe shall be intrusted to one person. No safe or safes shall be locked or unlocked except by three persons and on distinct combinations, and each person shall use a combination unknown to the others. All bonds, coupons, and certificates received by you in payment for bonds must be retained in your possession as above directed until the same shall be delivered to proper parties for transportation to Washington, D. C.

"All persons dispatched to London by the Department in custody of bonds to be delivered to you will be subject to your direction and control.

"Your compensation will be at the rate of six thousand dollars ($6,000) per annum and necessary expenses. All persons who may be sent to London in connection with refunding operations shall receive pay at the rates which will hereafter be given.

"You will inform the Secretary frequently, from time to time, of the condition of the business intrusted to you, and will render a weekly statement showing an exact account of all bonds and securities in your possession.

"Very respectfully,

"JOHN SHERMAN,
"*Secretary.*

"(Record, pp. 196–198.)"

XII.

At different times in the year 1879 the claimants, J. S. Morgan & Co., bought in London the twenty bonds which are the subject-matter of this suit, each and all of which, when so bought, had been called by the Secretary of the Treasury for redemption as hereinbefore set forth, and the call in each case had matured; and J. S. Morgan & Co. bought the said bonds with the knowledge that they had been so called. They bought them in the due course of business of well-known and responsible parties in London, and paid the full market price for them, to wit, par and accrued interest, in good faith, without having any reason whatever to sus-

pect that the bonds, or any of them, had been stolen or wrongfully obtained by any person, or that there was any defect in the titles of the persons from whom the purchases were made, or that the numbers of any of the bonds had been changed, or that the numbers on the bonds were not the original and genuine numbers as issued by the Treasury Department of the United States.

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XIII.

The said bonds were purchased, as above stated, by J. S. Morgan & Co., under the said contract entered into with them and their associates by the Secretary of the Treasury on January 21, 1879, for the negotiation of four per cent. bonds of the United States, and for the purpose of making payment to the United States for four per cent. bonds subscribed for under the said contract, or provided for therein, and to avoid the transmission of gold to settle their accounts with the Treasury Department.

XIV.

The said twenty bonds were delivered by the claimants at different times, soon after their purchase, to Charles F. Conant, the officer in charge of the agency for the refunding of the national debt, in London, and the same were received by the said Conant, after examination at the said agency, in payment for four per cent. bonds of the United States, which were then and there delivered to the claimants by the said Conant; and the said five-twenty bonds, after being perforated and canceled by the said Conant, were, at different dates between June 21 and August 30, 1879, transmitted by him, under the said contract of January 21, 1879, from London to the Treasury Department at Washington for redemption.

The said bonds were so transmitted to Washington by the said Conant, as follows:

June 21, 1879 (2 bonds, $2,000), numbers 165120, 165167. June 24, 1879 (5 bonds, $4,000), numbers 152410, 152411, 169044, 89707, 89728. July 26 and August 2, 1879 (9 bonds, $7,000), numbers 201292, 161662, 194742, 184791, 194439, 93043, 93170, 94577, 90319. August 30, 1879 (4 bonds, $2,000) numbers 97983, 85646, 86107, 98876.

XV.

On July 26, 1879, the Secretary of the Treasury, by letter, informed the said Conant that the said seven bonds ($6,000), so transmitted by him to the Department on June 21 and June 24, 1879, were said to have been stolen from the Manhattan Savings Institution of New York, and that payment of said bonds would be withheld, awaiting the decision of the court as to their ownership.

On August 19, 1879, the said Secretary, by letter, informed the said Conant that the said nine bonds ($7,000) so transmitted by him to the Department on July 26 and August 2, 1879, on account of the First National Bank of New York, were said to have been stolen from that institution, and the said bonds were, by request of the First National Bank of New York, sent to the said Conant, in order that they might be returned to J. S. Morgan & Co., taking in exchange therefor corresponding amounts of

available United States securities, to be placed when received at the Department to the credit of said bank.

On September 23, 1878, the Secretary of the Treasury, by letter, communicated like information to the said Conant in respect to the four bonds ($2,000) transmitted by him to the Department on the 30th of August, 1879; and, by request of said bank, the said bonds were sent to the said Conant, with instructions to return them to J. S. Morgan & Co.

26 The Secretary of the Treasury, in his said letter of September 23, 1879, described the numbers on the said four bonds transmitted by the said Conant to the Department on August 30, 1879, as altered numbers, as follows:

No. 85646, altered from 85046; No. 86107, altered from 85107; No. 97983, altered from 97933; No. 98876, altered from 99876.

XVI.

The said Conant, in compliance with the instruction of the Secretary of the Treasury, in his letter of August 19, 1879, requested J. S. Morgan & Co. to receive back the bonds referred to in the said letter, but they declined to do so.

On September 9, 1879, the said Conant reported to the Department on this subject as follows:

NEW COURT, ST. SWITHIN'S LANE,
LONDON, E. C., ENGLAND,
September 9, 1879.

SIR: I have the honor to acknowledge the receipt of a letter from the Acting Secretary of the Treasury, under date of the 19th ultimo, returning, at the request of the First National Bank of New York, seven thousand dollars in coupon bonds, consols of 1865, act of March 3, 1865, received by the Department with my letters of the 26th of July and the 2d August, on account of the above-named bank, and requesting that I would return the said bonds to the parties from whom I received them, taking in exchange therefor a corresponding amount of available U. S. securities, to be placed, when received, to the credit of the said bank; the bonds referred to being, it is alleged, a part of those stolen from the Manhattan Savings Institution of New York, the right of ownership of the same not yet having been determined.

In reply I have to say that I handed the bonds in question, together with the letter from the Department, to Messrs. J. S. Morgan & Co., and requested them to hand me, in lieu thereof, an equal amount of other U. S. securities, which they declined to do for reasons which, at my suggestion, they have stated in writing in the form of a letter addressed to you, which was given to Mr. Coon to deliver to you. Messrs. J. S. Morgan & Co. say that there will not be any controversy between themselves and the First National Bank in regard to these bonds; that as the Government owes them quite a large sum for accrued interest on called bonds which they have sent through me, in payment for the 4 per cent. bonds delivered to them, the $7,000 can be deducted from the interest account and applied to the payment of the account for delivery of the 4 per cent. bonds (the principal account). This treatment of the matter would simply leave the

question of the payment to them of the amount of these bonds to be decided hereafter, the same as in any case of the redemption of bonds.

The bonds are in my possession, and I shall hold them until I receive further instructions from you.

Very respectfully,

CHAS. F. CONANT.

The honorable JOHN SHERMAN,
Secretary of the Treasury, Washington, D. C.

The letter of J. S. Morgan & Co. to the Secretary of the Treasury, referred to in the said communication of Mr. Conant, was as follows:

Private.] 22 OLD BROAD STREET, LONDON,
1st September, 1879.

DEAR MR. SHERMAN: We have handed to Mr. Conant, in settlement of U. S. 4 per cent., various drawn bonds of 1875, amounting in all to $13,000, of which, much to our surprise, payment has been withheld by the Treasury Department pending the decision of a suit brought by the Manhattan Savings Institution as to the ownership of the bonds.

We would submit that this course is in entire contradiction to the practice of the Department hitherto, and in violation of the agreement upon the face of the bonds to pay them to bearer.

The Government has hitherto always paid its bearer obligations, as every other State, company, or individual does, to any innocent
27 holders who had paid full value for them. This we have done for all these bonds, having purchased them in the regular way of business in the market, and even paying a small premium for them to avoid the transmission of gold to settle our accounts with the Treasury in America.

They had no fixed maturity; they were arbitrarily drawn by the Government for payment at the present time; they carried no notice on their face that they were not payable in accordance with their tenor, and the only penalty for not presenting them was the cessation of interest. The analogy drawn from the equities attaching to an overdue note, as carrying notice on the face of non-payment, has consequently no bearing on the case. These bonds are scattered all over Europe, and the notice that they are due frequently does not reach the holder for months, and sometimes years. We buy them in the regular course of our business, nor could we do otherwise.

If the Government were to decide not to pay bonds to bearer of which the ownership is disputed, except after decision of courts, they would do what neither they nor any other Government has ever done before. It would prevent dealing in their securities, be a distinct injury to their negotiability, and a loss to the public credit.

We request, therefore, that you will revise the present decision of the Department and order these bonds to be paid to us. If the Manhattan Savings Bank fancy they have any claim to the proceeds of the bonds, they are free to commence legal proceedings against us for the establishment of their rights, and if decided in their favor they run no risk of not collecting from our firm; but surely it is not necessary for them to call into requisition the U. S. Government to collect their claim, to the injury of innocent holders.

The above reasons will explain why we have declined to receive back from Mr. Conant $7,000 of the bonds tendered to us to-day, besides which these particular bonds have been perforated and canceled by the Department, their negotiability has been destroyed, and we cannot recover upon them from those from whom we bought in consequence of their mutilated state. They are not in the condition in which we delivered them.

We are sure you will not consider that there was any want of courtesy to your Department in this refusal; it was simply done to protect our position, which in this case involves the interest of other firms connected with us in the refunding operations.

We have ventured to address you privately on this matter, as we desire to bring the subject before you in an unofficial form, feeling sure that the decision of the Department in this instance has been taken without your knowledge.

We remain, yours truly,

J. S. MORGAN & CO.

The bonds so sent by the Secretary of the Treasury to the said Conant, on August 19, 1879, and September 23, 1879, were returned by him to the Treasury Department, and are held in the office of the Secretary of the Treasury, Loan Division.

The Secretary of the Treasury was ready and willing to pay the amount of said bonds, with the interest which had accrued on each of them, to the legal owners thereof respectively whenever it should appear who were such legal owners; but he referred the question of the conflicting rights of the several persons claiming to be owners of the bonds to the Court of Claims by the following letter:

TREASURY DEPARTMENT, *March* 12, 1880.

To the honorable Chief Justice and the justices of the Court of Claims:

Whereas Messrs. L. von Hoffman & Co. and others have filed in this Department and claimed therefrom the present payment to them, respectively, of certain bonds which were issued by the United States in the year 1865, under the provisions of the act of Congress approved March 3, 1865, which bonds are commonly called "coupon bonds" and "consols of 1865," and which bonds, so demanded, are described in a certain list or schedule attached hereto marked A, wherein are stated the number and denomination of each bond, the payment of which is so claimed, the number of the call made by this Department upon the owner thereof to present the same for payment, the date of the call, and the date of the maturity thereof, the name of each person, or firm, or bank which presented said bonds to this Department and claimed payment thereof, together with the dates of the several letters transmitting said bonds to this Department;

And whereas the bonds set forth in said Schedule A are claimed as the lawful property of the Manhattan Savings Institution of New York, from the banking house of which said institution it alleges that they were stolen on the 27th day of October, 1878;

28 And whereas said institution also claimed from this Department the present payment of said bonds as promised in its calls therefor;

And whereas the claims presented by the persons, firms, and corporations named in said Schedule A and said savings institution, and the

proper and lawful payment of the bonds therein described, involve disputed facts and controverted questions of law, when the amount in controversy exceeds $3,000, and when the decision therein will affect a class of cases and furnish a precedent for the future action of this Department in the adjustment of a class of cases: I do herewith transmit to your honorable court, in compliance with section 1063 Revised Statutes, the said several claims of the persons, firms, and corporations named in said Schedule A, and also the claims of said savings institution, with the vouchers, papers, proofs, and documents pertaining to each of said claims, that the same may be proceeded in in your honorable court as if originally commenced therein by the voluntary action of each of said claimants.

Very respectfully,

JOHN SHERMAN,
Secretary.

Upon the foregoing facts the conclusion of law is, that the petition of J. S. Morgan & Co. should be dismissed, and that the Manhattan Savings Institution is entitled to recover the amount of the bonds sued on, namely, principal, $15,000, and interest, $284.53. The grounds of this conclusion are the same as those taken in the opinion of the court in the cases of L. von Hoffman & Co. vs. The United States and The Manhattan Savings Institution vs. The United States, to which reference is made.

VII.—*Opinion of the court in the cases of L. von Hoffman and Co. and The Manhattan Savings Institution and referred to in the above conclusion of law.*

DRAKE, Ch. J., delivered the opinion of the court:

On the 27th of October, 1878, the vault of the Manhattan Savings Institution in the city of New York was burglariously entered, and an iron safe therein was broken open, and from it were stolen and carried away a large number of bonds and other securities, representing a value of about two and a half million dollars; among which were sixteen United States five-twenty coupon bonds, consols of 1865, issued under the authority of the act of March 3, 1865, "to provide ways and means for the support of the Government," (13 Stat. L., 468, ch. 77). It does not appear that the officers or servants of the institution were guilty of any negligence in the care and custody of said bonds and securities.

The Secretary of the Treasury issued nine (J. R.) calls for five-twenty bonds for redemption, under the authority of the act of July 14, 1870, "to authorize the refunding of the national debt" (16 Stat. L., 272, ch. 256); in which calls were embraced all of said sixteen bonds. The first of the calls was dated July 30, 1878, and the last December 18, 1878, and each call matured three months after its date. The day of the maturity of the last call was therefore March 18, 1879.

Some weeks after this last date R. Raphael & Sons, bankers in London, purchased there six of these sixteen bonds; and thereafter in May, June, and July, 1879, purchased ten more; all of which they sold to the claimants L. von Hoffman & Co., then doing business as bankers in New York. The former firm bought the bonds in London, in good faith, at their full market value, without any reason to suspect any infirmity in the title to

them; and the latter firm took them in equal good faith, and paid R. Raphael & Sons the full market value of them, namely, par and accrued interest, without any reason to suspect any such infirmity. The first intimation to either of those firms of the bonds having been stolen, was given by the Treasury Department to L. von Hoffman & Co., when they
29 sent to the Department the first lot of six of the bonds and received therefrom information to that effect; and the same information was repeated as to the several succeeding lots, aggregating ten bonds, transmitted by them for redemption; and it was not until after the information was thus given to them, that it was imparted to R. Raphael & Sons. There is, therefore, not the least ground for imputing any wrong whatever in the transaction to either of those firms. The only question is as to the legal ownership of the bonds.

There can be no doubt that if R. Raphael & Sons or L. von Hoffman & Co. had purchased the bonds in good faith, for value, before the maturity of any call of the Secretary of the Treasury embracing them, they would be entitled to hold them against all the world. (Murray vs. Lardner, 2 Wallace, 110; Texas vs. White, 7 Ibid., 700.)

The only point in the case is, as to whether their purchase after the maturity of calls by that officer, changes L. von Hoffman & Co.'s legal rights. If those calls did not, in law, have the effect of making the bonds then due and payable, the Government cannot impeach or question the title of that firm, and must pay the amount of the bonds to them. If, on the other hand, the calls did have, in law, the effect of making the bonds due and payable at the maturity of the calls, then L. von Hoffman & Co. took overdue paper, subject to any and every defense which might be urged against their title.

The counsel for L. von Hoffman & Co. claim that to hold that the bonds became due and payable at the maturity of the calls, is to hold that thereafter they ceased to be negotiable. We do not concur in this view. Negotiable is a term applied to any contract, the right of action on which is capable of being transferred by endorsement and delivery, or by delivery alone, and the transfer of which vests in the holder a right to sue thereon in his own name. These bonds were payable to bearer, and were therefore transferable by delivery, and therefore were, without dispute, negotiable in the legal acceptation of the word, at any time before they became due and payable. Were they not equally negotiable after that time? In our opinion, it cannot be questioned that they were. We know of no rule of law which terminates the transferability of negotiable paper on the day it becomes due and payable. Least of all, is there any such rule in regard to Government bonds payable to bearer. They are just as negotiable after maturity as before; but with different results in the two cases as to the legal rights of the holder. He that takes them in good faith before their maturity, takes them with an unimpeachable title; but the title of him who takes them after maturity may be impeached.

To avoid the necessary effect of this doctrine, the counsel of L. von Hoffman & Co. takes the position that the time of the maturity of these bonds is that fixed on their face for their payment by the United States, namely, the first day of July, 1885, and that until after that day they continued fully negotiable, with all the protection accorded by the law-merchant to negotiable paper. And as a necessary corollary from this position he goes

further, and contends that the calls of the Secretary of the Treasury for these bonds for redemption, and the non-redemption of the bonds at or after the time when they might have been presented for redemption, did not make them then overdue in the sense of being dishonored; and that unless they were overdue in that sense, L. von Hoffman & Co.'s title to them, acquired after the maturity of the several calls, cannot be impeached. Upon the soundness of these positions depends the right of L. von Hoffman & Co. to these bonds. We have considered the positions with all the respect due to the able counsel, and are not able to sustain them, for reasons now to be stated.

The fundamental error in his position is in overlooking the very terms of the bonds themselves, which make a broad line of distinction between them and ordinary commercial paper. The latter has always a time of payment fixed by its own terms, and it is dishonored only when the promisor fails to pay at that time. But on the face of these bonds the Government, while fixing a day of payment, reserves to itself the right to pay before that day; and the question here is as to the effect of that reservation. To answer this question we must look not to the law-merchant, but to the statute law authorizing the issue of the bonds. They could have had no existence except by statutory authority; the reserved right to pay before the fixed day of payment could be stipulated for only in pursuance of statute; and to the statutes we must resort to determine the effects, direct and remote, of that reservation.

By the act of March 3, 1865, under which these bonds were issued, it was enacted as follows:

"That the Secretary of the Treasury be, and he is hereby, authorized to borrow, from time to time, on the credit of the United States, * * * any sums not exceeding in the aggregate six hundred millions of dollars, and to issue therefor bonds or treasury notes of the United States, in such form as he may prescribe; and so much thereof as may be issued in bonds * * * may be made payable at any period not more than forty years from date of issue, or may be made redeemable, at the pleasure of the Government, at or after any period not less than five years nor more than forty years from date, or may be made redeemable and payable as aforesaid, as may be expressed on their face."

This provision expresses what the contract of the United States should be with parties from whom money should be borrowed; it formed, to every intent, a part of every bond issued under its authority, and it was notice to all the world that the Government reserved the right, at its own pleasure, to redeem the bonds issued under its authority, at and after such time as the Secretary of the Treasury might fix for their redemption after the lapse of five years from their date.

The bonds in this case express on their face that they are payable on the first day of July, 1885; but they also express that they are "redeemable at the pleasure of the United States after the first day of July, 1870." These terms of the contract were in exact conformity with the statute.

What is the signification of the word redeemable there? It simply expresses the right of the United States to buy and receive back the bond, by paying the full amount of it before the fixed day of payment. He who took one of those bonds took it with full notice on its face that that right existed, and also with reference on its face to the act of Congress

authorizing the bond to be so shaped. By so taking it he agreed that that right might be exercised by the United States at their own pleasure, at any time after the first day of July, 1870.

What is the meaning of the words "at the pleasure of the United States"? Did they refer merely to the time when that pleasure might be exercised? We think not. It seems to us quite clear that the pleasure might be exercised, not only as to the time when, but also as to the place where and the terms on which the bonds might be redeemed, and the legal effect which should attend their redemption. No other view appears to us consistent with the rights of the United States, whether considered as a contracting party or as a sovereign.

Of course, the United States could indicate its pleasure only by an act of Congress. Notwithstanding the language of the bonds, there could be no right in any Department or officer, after the expiration of the five
31 years, to redeem one of them without express authority conferred by such an act. This conveyed notice to every holder of a bond that further legislation must be had before the bond could be so redeemed, and it also conveyed notice to him that he took the bond subject to the pleasure of the United States as to the character, scope, and effect of such legislation.

Such being the attitudes of the parties toward each other in relation to the bonds, the Congress declared the pleasure of the United States as to the exercise of the reserved right of redemption by the following provision in the above cited act of July 14, 1870:

"The Secretary of the Treasury is hereby authorized * * * to pay at par and cancel any six per cent. bonds of the United States of the kind known as five-twenty bonds, which have become, or shall hereafter become, redeemable by the terms of their issue. But the particular bonds so to be paid and cancelled shall in all cases be indicated and specified by class, date, and number, in the order of their numbers and issue, beginning with the first numbered and issued, in public notice to be given by the Secretary of the Treasury, and in three months after the date of such public notice the interest on the bonds so selected and advertised to be paid shall cease."

In this provision the following things appear: 1. That it refers to bonds which had become, or should thereafter become, redeemable by the terms of their issue; 2. That the redemption of them should be effected by their payment at par; 3. That the payment should be made by the Secretary of the Treasury; 4. That the Secretary should give public notice, indicating and specifying by class, date, and number the particular bonds to be at any time redeemed; and 5. That in three months after the date of such public notice the interest on the bonds selected and advertised by the Secretary to be redeemed should cease. Such was the form in which the United States saw fit to signify their pleasure as to the redemption of the bonds of which these sixteen were a part. That law instantly on its passage became, in legal effect, a part of every bond which expressed on its face that it was redeemable at the pleasure of the United States. Every holder of such a bond, at and after the date of that enactment, held it subject absolutely thereto, and to all legal results flowing from the operation thereof.

And now we come to the question whether a public notice—ordinarily

termed a call—given by the Secretary of the Treasury, that the principal and accrued interest of designated bonds would be paid on and after a certain day, and that the interest on such bonds would cease on that day, had the legal effect of bringing the bonds to maturity on the specified day of payment? If it did have that effect, then L. von Hoffman & Co. bought—not dishonored, but—overdue bonds, which remained in the market, not because the Government had failed to pay them, but because the holders had failed to present them for payment at the time named by the Government for their presentation for that purpose. L. von Hoffman & Co. contend that these bonds were not brought to maturity by those calls, but could be considered as matured only on the first day of July, 1885; and that, therefore, they took a title not subject to be impeached.

In considering this position the first point to be settled is the meaning of the maturity of a negotiable instrument. There can be but one answer to this—that the time of maturity is the time when the instrument becomes due and payable; that is, when the holder of it is entitled to demand, and the maker of it is bound to pay, all that is due upon it.

Ordinarily, the time of maturity is fixed by the terms of the instrument, and in such case neither party to it can, by his own separate act, change the time. The holder cannot demand payment before the fixed
32 day, nor can the maker compel the holder to receive payment before that day. This is so because the contract is to be enforced and fulfilled in strict accordance with its terms. Had these bonds been simply payable on the first day of July, 1885, the United States could not have required the holder of them, under penalty of the stoppage of interest, to receive payment before that day, and therefore they could never before then have been brought to maturity.

But that is not this case. The bonds in question, we repeat, bore on their face the declaration of the right of the United States to redeem them after the first day of July, 1870, and that right was reserved to the United States by the act under which the bonds were issued, and was, in every view, of the very essence of the contract. The subsequent act of July 14, 1870, prescribed how that right should be exercised.

Now, when that right was exercised in conformity with that act, we are unable to perceive why it did not bring these bonds to maturity, each one at the end of three months after the date of the call embracing it, when the holder of it would be entitled to receive the principal of it and accrued interest. This is no more nor less than just what he would be entitled to on any day of payment fixed in the bond. To contend, therefore, that the bond did not mature on the day specified in the Secretary's notice for its full payment seems to us to be wholly without justification. We therefore hold that each of the bonds in question did, in law, become matured on the day when the holder of it had the right, in pursuance of the Secretary's call, to receive payment of all then due on it; and that whoever bought them after that day took them as overdue paper, with only such title as his vendor had, and liable to have his title to them disputed and impeached.

There is in this ruling no hardship on L. von Hoffman & Co. which they did not knowingly bring upon themselves. They knew that these were "called bonds," and they bought them as such. If, when they bought

them, they believed that they had not matured, and would not mature until the first day of July, 1885, why should they have transmitted them, as they did instantly, to the Treasury Department for redemption? They bought them at par and accrued interest, at a time when it was a notorious public fact, of which we are entitled to take judicial notice, that in every money market in the world where United States bonds were bought and sold these bonds, if payable only in 1885, would have commanded a considerable premium. Why did they not, by a sale of them, realize the profit of the premium? The answer is very simple and inevitable. They knew that the bonds were due and payable; that they had, in eyes of all dealers in such securities, reached their maturity; that they had no market value, except, as representing the right to receive the principal of them and accrued interest; and they lost no time in seeking to obtain from the Treasury just that amount, and asked no more.

From all this it follows, as it seems to us, that L. von Hoffman & Co. acquired, as against the Manhattan Savings Institution, no title to these stolen bonds, and that the Institution has still the title to them, wholly unimpaired by the fact of their having been stolen.

At the argument much was said on both sides in regard to the alterations of the numbers of five of the bonds. We have not noticed that subject because, as between these contending claimants, the alterations have no bearing on the question of title. If the bonds were annulled by the alterations, then neither claimant is entitled to recover on them. Neither, therefore, can attempt to overthrow the other's right of re-
33 covery, because of the alterations, without thereby overthrowing his own right. It is only the Government that could set up the alterations as a defense, and it has not done so. On the contrary, it stands ready to pay the altered bonds whenever the rightful ownership of them is judicially determined; and it is to obtain such determination that the whole controversy was remitted to this court by the Secretary of the Treasury.

The decision of the court is, that the petition of L. von Hoffman & Co. be dismissed; and that judgment be entered in favor of the Manhattan Savings Institution for the principal of the sixteen bonds, $13,000, and for the aggregated interest accrued on them up to the maturity of the several calls made by the Secretary of the Treasury, as shown in the tabulated statement in Finding V, amounting together to $13,229.28.

VIII.—*Final judgment of the court in the case of J. S. Morgan and Co.*

At a Court of Claims held in the city of Washington on the 4th day June, A. D. 1883, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the defendants, and do order, adjudge, and decree that the petition of the claimants, J. S. Morgan and Company, be dismissed.

34 IX.—*Final judgment of the court in the case of the Manhattan Savings Institution.*

At a Court of Claims held in the city of Washington on the 4th day of June, A. D. 1883, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant,

and do order, adjudge, and decree that the said The Manhattan Savings Institution of New York do have and recover of and from the United States the sum of fifteen thousand two hundred and eighty-four dollars and fifty-three cents ($15,284.53).

35 X.—*Application of J. S. Morgan and Co. for and allowance of appeal.*

J. S. MORGAN AND CO. VS. THE UNITED STATES; ALSO THE MANHATTAN SAVINGS INSTITUTION VS. THE UNITED STATES.

From the judgment rendered in the above-entitled case of J. S. Morgan and Co. vs. The United States, on the 4th day of June, 1883, in favor of the defendants, dismissing the petition of the said claimants, J. S. Morgan and Co., and also from the judgment rendered in the above-entitled case of The Manhattan Savings Institution vs. The United States, on the said day, in favor of the said The Manhattan Savings Institution, the said claimants, J. S. Morgan and Co., by their attorney, on the 15th day of June, 1883, make application for and give notice of an appeal to the Supreme Court of the United States.

J. HUBLEY ASHTON,
Attorney for J. S. Morgan & Co.

Filed June 15, 1883.

AT CHAMBERS, *June* 15, 1883.

Allowed.

C. D. DRAKE,
Chief Justice.

36 XI.—*Application of defendants for an appeal from the judgment in the case of The Manhattan Savings Institution and allowance of same.*

J. S. MORGAN AND CO. VS. THE UNITED STATES; ALSO THE MANHATTAN SAVINGS INSTITUTION VS. THE UNITED STATES.

From the judgment rendered in the above-entitled case of the Manhattan Savings Institution vs. The United States, on the 4th day of June, 1883, in favor of the said The Manhattan Savings Institution, the defendants, by their Attorney-General, on the 15th day of June, 1883, make application for and give notice of an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Ass't Attorney-General.

Filed June 15, 1883.

AT CHAMBERS, *June* 15, 1883.

Allowed.

C. D. DRAKE,
Chief Justice.

57 In the Court of Claims. December term, 1882.

J. S. MORGAN AND COMPANY
vs.
THE UNITED STATES. } No. 12273.

ALSO

THE MANHATTAN SAVINGS INSTITUTION
vs.
THE UNITED STATES. } No. 12273.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled causes, of the findings of fact and conclusion of law thereon, of the opinion of the court, of the final judgment of the court in each of the aforesaid causes, of the application of J. S. Morgan and Company, claimants, for an allowance of appeal to the Supreme Court of the United States, of the application of the United States, defendants, for allowance of appeal to said Supeme Court in the case of the Manhattan Savings Institution, and of the allowance of each of said appeals by Chief-Justice Drake.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims at Washington City, this 6th day of July, A. D. 1883.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 526. Junius S. Morgan and Walter H. Burns, copartners as J. S. Morgan & Company, appellants, vs. The United States, and No. 527, The United States, appellant, vs. The Manhattan Savings Institution. Court of Claims. Filed 7th July, 1883.